

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRENCE MOORE,

Case No. 09-13536

Plaintiff,
v.

HONORABLE ARTHUR J. TARNOW
SENIOR UNITED STATES DISTRICT JUDGE

GEORGE HARTLEY, ET AL.,

HONORABLE MICHAEL HLUCHANIUK
UNITED STATES MAGISTRATE JUDGE

Defendants.

**ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION [57], OVERRULING PLAINTIFF'S OBJECTION
TO THE MAGISTRATE JUDGE'S ORDER DENYING MOTION TO PLEAD SPECIAL
MATTERS [58], AND GRANTING DEFENDANTS' MOTION TO DISMISS [15]**

Before the Court is the Magistrate Judge's Report and Recommendation [57] of June 4, 2010.

The Report and Recommendation recommends that Plaintiff's Complaint [1] against Defendants be dismissed on statute of limitations grounds. On June 21, 2010, Plaintiff filed an Objection. Defendants filed a response on June 29, 2010. Plaintiff filed a reply on July 12, 2010.

Also before the Court is Plaintiff's Objection to the Magistrate Judge's order denying Plaintiff's Motion to Plead Special Matters. Plaintiff filed an Objection on June 29, 2010. Defendants did not file a response.

I. PLAINTIFF'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

Plaintiff raises four objections and requests oral argument. This Court concludes that oral argument is unnecessary for the disposition of the objections. Plaintiff's "Objection No. 1" does not raise a specific objection but rather is a statement of what Plaintiff asserts are the facts of the case. Plaintiff's "Objection No. 2" states that "[t]he Magistrate erred in concluding its

analysis of the failure to give a more extended authority of Rule 56 of Civil P. For Summary Judgment.” However, the Magistrate Judge provided a proper statement of the summary judgment standard. Accordingly, these objections lack merit.

Plaintiff’s other objections are that the Magistrate Judge erred in finding that the statute of limitations was not tolled due to Plaintiff’s mental incapacities and in concluding that the latest the statute could have expired was January 29, 2008. However, the Magistrate Judge properly found that based on the evidence before him, Plaintiff failed to meet his burden of establishing his complaint was not barred by the statute of limitations. *See Britt v. Smith, et al.*, 9 Fed. Appx. 409, 411 (6th Cir. 2001) (unpublished) (Court finds that Plaintiff has not met his burden and affirms dismissal of complaint after concluding that although “medical reports indicate that [Plaintiff] may suffer from moderate impairment sufficient to justify the appointment of a guardian, they do not address the question of whether [Plaintiff] was able to comprehend his legal rights at the time he brought his suit in federal court” and they also “shed no light on [Plaintiff’s] mental state at the time his claim accrued...”). Thus, these objections are denied.

II. PLAINTIFF’S OBJECTION TO THE ORDER DENYING MOTION TO PLEAD SPECIAL MATTERS

Plaintiff filed an objection to the Magistrate Judge’s order denying Motion to Plead Special Matters as moot. This objection is untimely. Moreover, it does not raise any specific objections to the order but rather discusses the Magistrate Judge’s Report and Recommendation on Defendants’ Motion to Dismiss.

III. CONCLUSION

The Court has reviewed the record and the parties' pleadings in this case, and being fully advised in the premises,

IT IS ORDERED that the Report and Recommendation [57] of the Magistrate Judge is hereby **ADOPTED**.

IT IS ORDERED that Plaintiff's Objection to the Magistrate Judge's order [58] denying Plaintiff's Motion to Plead Special Matters is **OVERRULED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss [15] is **GRANTED**.

SO ORDERED.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
Senior United States District Judge

Dated: July 30, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record and Terrence Moore #208380, CHIPPEWA CORRECTIONAL FACILITY, 4269 W. M-80, Kincheloe, MI 49784 on July 30, 2010, by electronic and/or ordinary mail.

S/LISA M. WARE
Case Manager